

CASE NO. 08cv 1589

ATTACHMENT NO. 14

EXHIBIT _____

TAB (DESCRIPTION) _____

1 Q Can you describe that machine to Judge
2 holt?

3 A It has a lot of numbers on it, on and off
4 button on it, X-ray button on it, X-ray exposure
5 switch for producing the X-ray.

6 Q Thank you. And when this person arrived
7 at -- By the way, was this person a male or female?

8 A Female.

9 Q And when she -- When you spoke to her,
10 what did you have her do when she went into the
11 room with you?

12 A Well, I had her -- I had my cassettes
13 there. I was going to use tape X-rays, place her
14 hands on the cassettes, and I positioned it for the
15 first X-ray.

16 Q And when you placed her hand in position,
17 did you put it on the table?

18 A Yes.

19 Q And what did you do after you placed her
20 hand on the table?

21 A Well, I went behind the X-ray panel and
22 took the X-ray.

23 Q Now, the equipment that you used, the X-
24 ray machine that you used, you used the word
cassette, what is a cassette?

1 A That would be the film that the X-ray is
2 being done on.

3 Q And did they cassette have an
4 identification assembly attached to it?

5 A Yes, it was what's known as a blocker.

6 Q What's a blocker?

7 A It's a part of the film that we use to
8 stamp for the name and stuff to come out.

9 Q And in this particular case, this is the
10 way this particular cassette was set up, then, is
11 that correct?

12 A Yes.

13 Q And in this particular case, did you also
14 have an identification -- or some way of
15 identifying the X-ray?

16 A Yes, once we take the film, we have what's
17 known -- what we call a flashcard with the
18 patient's name, date, that she was there, and a log
19 number where we put it in the log book.

20 Q In addition to that information, is there
21 any other information on that card?

22 A Usually when the examine was done.

23 Q And is the hospital name also on there?

24 A Yes, it is.

Q Now, Carolyn, did you use an

1 identification card on a flashcard in this
2 particular case?

3 A Yes, I did.

4 Q And how was that flashcard reflected on
5 the X-ray?

6 A Well, once you took the film into the dark
7 room, the blocker, I was telling you about on the
8 side?

9 Q Yes.

10 A Shows you where to stamp the film into
11 this flasher, and it comes out on the film. Once
12 it's developed after you stamp it.

13 Q And did you do that in this particular
14 case?

15 A Yes.

16 Q Now, Carolyn, approximately -- Did you
17 take more than one X-ray in this case?

18 A Two X-rays, but three views.

19 Q And after you took those X-rays, what did
20 you do?

21 A Well, once I made sure I had the right
22 amount of film, I took them to the radiologist to
23 be read.

24 Q To be what?

A To be read.

1 Q Before you took them to be read, after you
2 actually took the photographs, the shots, did you
3 develop those?

4 A Yes, I did.

5 Q Could you describe to Judge Holt what you
6 did?

7 A You go into the dark room, you have to do
8 this in the dark, you took the flashcard with you
9 because that's how you're going to stamp the film
10 of who you are doing. You take the film out of the
11 cassette, and you stamp with the card, and you put
12 it through the process.

13 Q And did you develop, then, these X-rays?

14 A Yes.

15 Q And are they marked accordingly with the
16 identification which you described?

17 A Yes, once they come out of the processor,
18 you have to check it to make sure the name, what
19 you do, and the slides mark correctly on the film.

20 Q Have you had any training in developing
21 that?

22 A Yes, that's part of the school training.

23 Q And you satisfactorily completed that
24 training as well?

A Yes.

1 Q That's the two-year training program you
2 described?

3 A Yes.

4 Q Carolyn, this X-ray machine that you used,
5 was that machine in proper working order?

6 A Yes, it was.

7 Q How did you know that?

8 A Well, number one, we have a warm-up
9 procedure that we follow in the morning, and also
10 if it's not working, you won't get no film.

11 Q Is it customarily inspected as well?

12 A Yes, it is.

13 MR. MURPHY: Could I have a moment, Judge?

14 THE COURT: Sure.

15 (Whereupon there was a short
16 pause in the proceedings)

17 MR. MURPHY: May I approach, Judge?

18 THE COURT: You may.

19 MS. PLACEK: I ask for a sidebar, Judge.

20 THE COURT: Miss Strong, would you step down
21 from the witness stand? Step into the adjoining
22 conference room for a moment, please.

23 Miss Placek?

24 MS. PLACEK: Very briefly, Judge, and very
quickly, I anticipate that the State was about to

1 show what they came over to counsel's table and
2 showed us which purports to be different X-ray
3 shots. With all due respect, Judge, and with my
4 limited knowledge of x-ray and perhaps now proven
5 from the State, one of them strikes me definitely
6 not as an X-ray of a hand, which I suggest the
7 foundation has been only laid as to that, and the
8 other, Judge, is, of course, questionable, that's
9 why I asked the Court for proof as to whether or
10 not the State was going to attempt to have this
11 young lady from Roseland Community Hospital
12 identify all four shots as shown within that.

13 THE COURT: Mr. Murphy?

14 MR. MURPHY: Judge, actually, there's three
15 different exhibits. One of the exhibits that's two
16 X-rays on it, so there's actually two shots on that
17 one exhibit. Those both corresponds to the date in
18 which this witness was working, and she will
19 identify them as X-rays that she took. The other
20 exhibit is an X-ray that was also taken at Roseland
21 Community hospital. However, this witness will not
22 testify that she took that X-ray. She will
23 identify it, though, as an X-ray that was taken at
24 Roseland community Hospital.

MR. LUFRANO: Objection, your Honor. It's not

1 a document where other material that's under her
2 care, custody, or control. She's not the record
3 keeper nor is she the person who holds X-rays in
4 some filing capacity.

5 MR. MURPHY: Judge, I don't think she has to be
6 the record keeper. I think it can be -- In fact,
7 cases are clear that it doesn't have to be a record
8 custodian. It could be another qualified witness,
9 and at this point, we have established that she was
10 a qualified witness.

11 MS. PLACEK: With all due respect, Judge, she's
12 just qualified with the three pictures she's taken,
13 which are the ones State spoke of, the one and the
14 two separate views, Judge.

15 THE COURT: What do you contend is the basis
16 for admissibility of these documents, Mr. Murphy?

17 MR. MURPHY: Well, Judge, as to the -- You're
18 talking about the last document now, Judge?

19 THE COURT: I'm talking about all of them. If
20 some of those documents, I take it, you're saying
21 are within this witness' knowledge as having been
22 made or taken, made at the time at Roseland
23 Hospital on the 19th of August, 1986, that's one
24 basis for admissibility.

MR. MURPHY: Right.

1 THE COURT: The other is what?

2 MR. MURPHY: Well, Judge, as to the other X-
3 ray, our basis is business record, not the one
4 obviously she's dealt with, but the other one she
5 does not have direct involvement in.

6 THE COURT: It isn't your contention you have
7 laid a foundation to make this X-ray a business
8 record?

9 MR. MURPHY: Well, Judge, that's how we are
10 seeking to introduce the last X-ray.

11 THE COURT: You're saying the foundation you
12 have laid is sufficient to establish this document
13 as a business record?

14 MR. MURPHY: No, at this point, Judge, I intend
15 to do it when I approach her, not at this point.

16 MS. PLACEK: That would be letting the horse
17 out of the barn, and then locking the barn door.

18 THE COURT: How would one go about doing it
19 otherwise than to show -- to establish if he can
20 that the document is, in fact, a business record,
21 and then seek its admission into evidence? He has
22 to show it to the witness it seems to me.

23 MS PLACEK: He would also have to show that
24 there is a purview of knowledge other than taking
the remote matter she testified to.

1 THE COURT: Well, what you're simply saying he
2 may not be able to make the foundational base for
3 admissibility?

4 MS. PLACEK: The Court is correct, Judge.
5 That's what I am saying, not with this witness, not
6 with the questions he's asked her so far.

7 THE COURT: That's why he's going to ask her
8 some more questions.

9 MS. PLACEK: With all due respect, Judge, I
10 have a feeling, and accuse me of being a little
11 skeptical of my feelings, I have a feeling, Judge,
12 that what the State is about to say is about to
13 have her identify the identification point of the
14 X-ray and say, "Do you recognize that?" Referring
15 to the third X-ray not taken by her, and she will
16 say, "Oh, yes, that's the blank tape that we put on
17 all our X-rays," and have it justified like that.
18 My position, Judge, quite frankly, is that that's
19 not quite enough as established by law not only
20 quite enough to establish by law, Judge, but I
21 would suggest that even a little more has to be
22 done, and the reason I am speaking somewhat
23 haltingly, Judge, is that I am not going to teach
24 them how to try their case --

MR. MURPHY: We appreciate that.

1 MS. PLACEK: Please address your comment to the
2 Court, counsel.

3 THE COURT: What are you saying?

4 MS. PLACEK: Judge, it's distracting when
5 counsel is referring that I come from a kennel.

6 Judge, in this particular matter, what
7 I am suggesting to the court it's not my duty to
8 teach them how to try a case, and I am saying it's
9 my duty, in fact, to instruct the Court when I feel
10 an objection lies.

11 THE COURT: Mr. Sheriff, will you ask the
12 witness to return?

13 You may be seated.

14 All right. At this point, the
15 objection of the defendant is overruled. You may
16 proceed.

17 MR. MURPHY: Thank you, Judge.

18 May I approach, Judge?

19 THE COURT: You may.

20 MR. MURPHY Q Carolyn, I am going to show you
21 what we have marked as People's Exhibit No. 13.
22 I'm going to ask you to look at this and tell me if
23 you recognize what it is?

24 A Okay, this is what we all the lateral view
of the wrist.

1 MS. PLACEK: Objection. I believe the witness
2 is not qualified to read the X-ray.

3 MR. MURPHY: Judge, I will qualify her if it
4 would help in this area.

5 Q Carolyn, have you had any
6 experience and/or training in looking at X-rays and
7 determining generally what they portray?

8 A Yes.

9 Q How much training or experience have you
10 had? Could you tell Judge Holt?

11 A Well, it goes along with the training.
12 You have to know what you're taking, what views are
13 required.

14 Q And approximately how many X-rays have you
15 taken in your career?

16 A A lot of them, quite a few, over -- It's
17 too many to put a number on it.

18 Q Would you say more than 500?

19 A Yes.

20 Q More than a thousand?

21 A Yes.

22 Q Carolyn, when you take those X-rays, do
23 you have to look at those X-rays initially before
24 you give them to the doctor who requested them?

A Yes.

1 Q To show what the doctor wants --

2 MR. LUFRANO: Objection. She wouldn't know
3 what the doctor is looking for.

4 THE COURT: Overruled, Mr. Lufrano. She cannot
5 read an X-ray, but she can look at an X-ray to see
6 if it's the lateral view of the hand or posterior
7 view of the hand.

8 MR. LUFRANO: Your Honor, she's indicating if
9 she place it in a lateral position, she gets a
10 lateral view. It's a view of the arm that she's
11 able to distinguish whether or not it was moved or
12 not moved after the X-ray was taken.

13 THE COURT: Overruled.

14 MR. MURPHY Q Carolyn, you can answer that
15 question. Do you remember the question I asked?

16 A No.

17 MR. MURPHY: Judge, I forgot my question, too,
18 I'm sorry.

19 (Whereupon question read back)

20 THE WITNESS: Yes, I do.

21 MR. MURPHY Q At this time I ask you to look
22 at People's Exhibit No. 13 and tell me what that
23 is.

24 A This is the lateral view of the wrist. It
has the --

1 MR. LUFRANO: Objection to what it has.

2 THE COURT: Overruled.

3 THE WITNESS: Okay, it has a left what we call
4 an X-ray left marker indicated on the left wrist
5 that was done, it has my initials on it, C.S.

6 MR. MURPHY Q And where are your initials at?

7 A It's right next to the "there."

8 Q And you customarily place your initials on
9 X-rays that you take at Roseland Hospital as part
10 of your regular practice or procedures?

11 A Yes.

12 Q And are those initials that are on that X-
13 ray the same initials or in the same form that you
14 place your initial -- which you placed your
15 initials on X-rays?

16 A Yes.

17 Q And you testified that you used what's
18 called a -- an information plate, is that what you
19 call it? What do you call it?

20 A Flashcard.

21 Q And is there a flashcard on this
22 particular X-ray?

23 A Yes, it is.

24 Q And does that flashcard reflect the
information with respect to this patient which you

1 recorded at the time you prepared that X-ray?

2 A Yes, it does.

3 Q Thank you, and that's an X-ray that you
4 took, is that correct?

5 A Yes.

6 Q I'm also going to show you what's been
7 marked as People's Exhibit No. 14 for
8 identification purposes. Do you recognize that?

9 A Yes.

10 Q What is shown in People's Exhibit No. 14?

11 A It would be an A P view and -- bleak view.

12 Q And there's two different shots on that X-
13 ray, is that correct?

14 A That's correct.

15 Q And, again, is your -- is there any reason
16 that you recognize what's portrayed in that
17 particular exhibit, People's Exhibit No. 14? Let
18 me rephrase that question. How do you recognize
19 that X-ray?

20 A How did I recognize it?

21 Q Yes.

22 A As what it is?

23 Q Yes. Let me rephrase it. How do you
24 recognize that as an X-ray that you took?

A Because of my marker and initial.

1 Q Are your initials also on that X-ray as it
2 is on People's Exhibit No. 13?

3 A Yes.

4 Q And in addition to that, is the -- Is
5 there a flashcard on that X-ray?

6 A Yes.

7 Q In fact, there are two flashcards for each
8 X-ray that was taken?

9 A Correct.

10 Q And what does the flashcard on that
11 exhibit and also on People's Exhibit No. 13
12 reflect?

13 MS. PLACEK: Objection. The exhibit speaks for
14 itself.

15 THE COURT: Overruled.

16 MR. MURPHY Q What does the flashcard in that
17 exhibit and also People's Exhibit No. 13 reflect?

18 A It has the name of the patient.

19 Q What is that name?

20 A Denise Johnson --

21 MS. PLACEK: Continuing objection.

22 THE COURT: Objection is sustained. It still
23 does not obviate the hearsay nature of that
24 response. the objection is sustained.

MR. MURPHY Q What other information is

1 indicated on that flashcard?

2 A The date that the X-ray was taken, the
3 hospital where they was from and a number that we
4 logged in the log book for each patient that was
5 done that day.

6 Q And those X-rays you have identified in
7 People's Exhibit No. 13 and 14, are these the
8 exhibits you took on August 18, 1986?

9 A Yes.

10 Q And are these the X-rays you took of
11 Denise Johnson?

12 A Yes.

13 MS. PLACEK: Objection.

14 THE COURT: Objection sustained.

15 Counsel, come forward a moment.

16 Miss Reporter.

17 (Whereupon the following pro-
18 ceedings were had in chambers:)

19 THE COURT: I don't know whether or not I am
20 doing what Miss Placek accuses you of doing. What
21 it seems to me what I am doing is what I think I'm
22 doing is anticipating what this is all about, and
23 what the problems are that I'm likely to encounter.

24 You don't have to unfold your case
before me, prematurely, and you're free to decline

1 so to do, but I'm sitting here in order to help put
2 this in a frame where I can deal with it and
3 understand it, anticipating where you're going, and
4 I anticipate that you're trying to show the
5 identification of Denise Johnson through the
6 earlier X-rays taken of her in 1986, that they were
7 comparing with X-rays from the body and concluded
8 that they are one in the same. The question of
9 whether or not the X-rays or any medical records
10 constitute a business record is what has been
11 running through my head since Miss Placek raised
12 the objection, and I have to have recourse to
13 develop books or your help, one or the other
14 because I didn't do a lot of PI work, okay, so,
15 therefore, a lot about the medical records and that
16 kind of thing, but my recollection of the medical
17 record is an exception to the business record.
18 It's one of the exception -- It is not a business
19 record, thus it requires different kinds of proof
20 than does a business record in a classic sense, if
21 I understand the classic sense. That's what I'm
22 thinking up there on the bench, figuring out where
23 you people are going, but if I am wrong on that, my
24 head can go back to listening to something better
than what's rattling around in my head making

1 noises.

2 MR. MURPHY: Judge, first of all as to the
3 first two exhibits which the witness identified, we
4 are not offering those as business records. We
5 don't have to because she's already identified them
6 as X-rays that she took.

7 THE COURT: Yes, but we don't know who she took
8 them of, and you're going to ask me to conclude
9 that those are X-rays of Denise Williams -- Denise
10 Johnson, and there's no way that witness can know
11 that.

12 MS. PLACEK: Or this particular Denise Johnson.

13 MR. CASSIDY: Just a piece of circumstantial
14 evidence, Judge, that we are offering, that's all.

15 MR. PLACEK: Judge, circumstantial evidence
16 even still has to be based on foundation.

17 MR. MURPHY: Judge, I don't have a case I can
18 hand you, and I don't know if defense counsel has
19 any or not, but Court can allow X-rays as business
20 records, and I'm primarily concerned with --

21 THE COURT: Do you have the case?

22 MR. MURPHY: No, just from reading -- Do you
23 want this on the record, Judge.

24 THE COURT: Not necessarily, but it can be.

MR. MURPHY: I don't really care if it's on the

1 record or not at this point, Judge.

2 THE COURT: She wants it on the record.

3 MS. PLACEK: We might as well stay on the
4 record.

5 MR. MURPHY: Judge, I can't give it to you at
6 this point, but what I've read primarily are trial
7 techniques manuals in preparation of this witness.
8 Now, from what I read the Court's take notice that
9 business records can be used. I don't know if
10 that's reference to Illinois Courts or not. I have
11 to do some research in the area.

12 THE COURT: You got a copy of 38?

13 MS. PLACEK: That's the one I have before me.

14 THE COURT: That one is old.

15 MS. PLACEK: I took it to read because that's
16 one of the reasons you were overruling my
17 objection, Judge. I got one in my bag. Which
18 section.

19 THE COURT: 115 dash 5.

20 MS. PLACEK: It talks about coroner's record.
21 I suggest that's probably the same thing.

22 THE COURT: Okay, they make coroners
23 admissible.

24 MS. PLACEK: That's the exception. I'm
referring to 15-5 not five point one, no writing or

1 record made in the regular course of business shall
2 become admissible as evidence by application of
3 this section and such record or writing have been
4 made by anyone in the regular course or form of
5 hospital or medical records.

6 THE COURT: That is?

7 MS. PLACEK: 15 dash 5-C-1.

8 THE COURT: That's kind of what I thought. No
9 writing or record made in the regular course shall
10 be admissible as evidence by the application of
11 this section if, one, such writing or record has
12 been made by anyone in the regular course of any
13 form of hospital or medical business.

14 MS. PLACEK: And next is the police report
15 exception I think.

16 MR. MURPHY: Well, how does that differentiate
17 -- Isn't that different than from an X-ray? I made
18 a reference to medical reports just like police
19 reports.

20 THE COURT: I think that -- that includes the
21 medical record on a patient admitted into the
22 hospital on all of its form which would include a
23 person's X-rays, lab reports.

24 MS. PLACEK: Lab workup.

THE COURT: Nurses' notes. The whole thing

1 that's called the patient's medical record is the
2 way I read that. Now, I may be wrong, but that's
3 the way I understand the rule, and that's what was
4 bothering me as I was sitting there on the bench
5 trying to figure out what the hell we are doing .

6 Are there any cases --

7 MR. MURPHY: There's not much in here. There's
8 one page of cases, and the cases deal with medical
9 reports, hospital records.

10 MS. PLACEK: So the Court knows, there's a way
11 of doing this, Judge, and the Court knows that this
12 was the status of my objection outside that this
13 isn't the way of doing it. I am speaking of the
14 way the State's examination is going, thus, Mr.
15 Lufrano and my objections as to it.

16 THE COURT: Well, you may -- You may very well
17 be right.

18 MS. PLACEK: Here it says medical records
19 (Indicating), Judge.

20 MR. MURPHY: Do you mind if I read over your
21 shoulders, your Honor?

22 THE COURT: No, of course not.

23 Can you quickly find the last question
24 that was posed to the witness?

(Whereupon question read back)

1 MR. MURPHY: Judge, are you going to let me
2 question her with respect to the last X-ray?

3 THE COURT: What are you going to ask her?

4 MR. MURPHY: I'm going to ask her what it is.
5 I'm going to ask her to identify it. I'm going to
6 ask was the record made by a person with knowledge
7 of the information that's transmitted. I'm going
8 to offer it as a business record.

9 MS. PLACEK: Judge, that's absurd.

10 THE COURT: No, I'm not going to let you do
11 that.

12 MR. MURPHY: Well, Judge, that's the procedures
13 followed as a business record.

14 THE COURT: Well, it's not a business record.

15 MR. MURPHY: We're taking a position that it
16 should be admissible.

17 THE COURT: If there is any way they can
18 exhaust that, I don't know how they can exhaust
19 that because I suspect you're going to object, and
20 I'm going to rule on the objection, and then if
21 there is anything that's admitted around that, that
22 helps to exhaust her recollection, if she has any
23 recollection that comes into evidence, we will use
24 it.

MS. PLACEK: So as to the third X-ray, you're

1 going to give them a break?

2 THE COURT: What do you mean a break? They can
3 ask the questions, and you object, I will rule on
4 it. I don't know how they can make a record, that
5 the Court erred if I don't allow them to ask a
6 question, so I need to allow them to ask the
7 questions as an offer of proof or as a voir dire
8 examination, and since it is a bench trial, it
9 doesn't make any difference, so we will hear it at
10 one time, and I will rule on the objection.

11 (Whereupon the following pro-
12 ceedings were had in the court-
13 room:)

14 MR. MURPHY Q Are those the X-rays you took on
15 August 19, 1986?

16 A Yes.

17 Q And is the name of the person whose X-rays
18 you took indicated on the plate, identification
19 plate?

20 MS. PLACEK: Objection.

21 THE COURT: Overruled.

22 THE WITNESS: Yes, it is.

23 MR. MURPHY Q I'm also going to show you
24 what's marked as People's Exhibit No. 15. I'd ask
you to look at that and tell me if you recognize

1 that?

2 A This is an X-ray of the pelvis --

3 MR. LUFRANO: Objection to her identifying the
4 X-ray that she didn't take.

5 THE COURT: People's Exhibit 15 was taken by
6 this witness?

7 MR. MURPHY: No, Judge.

8 THE COURT: The objection is overruled.

9 MR. MURPHY Q I'm sorry, you can answer the
10 question.

11 A This would be a pelvic X-ray.

12 Q And you recognize that X-ray?

13 MS. PLACEK: Objection. Foundation.

14 MR. MURPHY: I will rephrase the question,
15 Judge.

16 Q You did not take that X-ray, is
17 that correct, Carolyn?

18 A No, I did not.

19 Q Do you recognize that X-ray as an X-ray
20 that was taken at Roseland Community Hospital?

21 MS. PLACEK: Objection. Foundation.

22 THE COURT: The objection is sustained.

23 MR. MURPHY: I'm trying to lay a foundation,
24 Judge. I will rephrase the question.

Q Carolyn, do you recognize that

1 X-ray?

2 MS. PLACEK: Objection. Asked and answered.

3 THE COURT: Overruled.

4 THE WITNESS: Yes, I do.

5 MR. MURPHY Q And what do you recognize that
6 X-ray to be?

7 MS. PLACEK: Objection. Asked and answered.
8 She stated it was a pelvic.

9 THE COURT: Overruled.

10 MR. MURPHY Q Apart from being a pelvis, what
11 else do you recognize with regard to that X-ray?

12 A That it has -- the identification of whose
13 X-ray it is, and that's it.

14 Q Is there a flashcard in that X-ray, then,
15 ma'am?

16 A Yes, it is.

17 MS. PLACEK: Objection..

18 THE COURT: That's leading. Please don't lead.

19 MR. MURPHY Q What are you looking at to cause
20 you to recognize that X-ray?

21 MS. PLACEK: Objection.

22 THE COURT: Overruled.

23 THE WITNESS: To recognize what it is or whose
24 it is.

MR. MURPHY Q What it is and whose it is. How

1 are you able to recognize what that is?

2 MS. PLACEK: Objection, your Honor. Compound.

3 THE COURT: Objection is sustained.

4 MR. MURPHY Q how are you able to recognize
5 what that is?

6 A Because I know what it is.

7 Q You're referring to the fact that this is
8 a pelvis?

9 MR. LUFRANO: Objection.

10 THE COURT: Overruled.

11 MR. MURPHY Q And how are you able to
12 recognize who it is or what information -- whatever
13 information you know about that X-ray, how are you
14 able to recognize that?

15 MS. PLACEK: Objection.

16 THE COURT: Overruled.

17 THE WITNESS: By the stamp in the upper left-
18 hand corner.

19 MR. MURPHY Q And is that the flashcard you
20 refer to?

21 A Yes.

22 Q And, Carolyn, is that flashcard -- Does
23 that flashcard that you see there familiar to you?

24 A Yes, it is.

MS. PLACEK: Objection.

1 THE COURT: Overruled.

2 MR. MURPHY Q Is it?

3 A Yes, it is.

4 Q And, in fact, at Roseland Community
5 Hospital, do you use customarily the same proce-
6 dure -- Do all the technicians there use the
7 procedure of taking of the X-ray?

8 MS. PLACEK: Objection.

9 THE COURT: Objection sustained.

10 MR. MURPHY Q Are you familiar with the
11 procedure you use at Roseland Community Hospital as
12 to taking X-rays?

13 MS. PLACEK: Objection as to lack of knowledge,
14 Judge.

15 THE COURT: Overruled.

16 MR. MURPHY Q Are you familiar with the
17 procedure?

18 A Yes.

19 Q And the procedure that you described
20 before, the one that you used on August 19, 1986,
21 is that the procedure you customarily use at
22 Roseland Community Hospital?

23 THE COURT: Objection is sustained.

24 MR. MURPHY Q What is the procedure you use at
Roseland Community Hospital in taking X-rays?

1 MS. PLACEK: Objection.

2 THE COURT: Overruled.

3 THE WITNESS: The procedures that's used would
4 be all films that's taken must have the
5 identification of the patient that you've done the
6 examine on, and the date and the age of the
7 patient.

8 MR. MURPHY Q And that information is put on
9 the flashcard which is placed on the X-ray?

10 A Yes.

11 MS. PLACEK: Again, objection.

12 THE COURT: Overruled.

13 MR. MURPHY Q And who places that information
14 on the X-ray?

15 A That on the X-ray, that would be the
16 technologist that done the case.

17 Q Such as yourself, a person like yourself,
18 is that right?

19 MS. PLACEK: Objection to such as yourself,
20 Judge.

21 THE COURT: Overruled.

22 MR. MURPHY Q And is that record, that X-ray,
23 People's Exhibit No. 19, is that made by a person
24 with knowledge of or made by --

THE COURT: People's Exhibit what?

1 MR. MURPHY: I'm sorry, Judge, that's 15.

2 Q Is that record made by a person
3 with knowledge of or made from information
4 transmitted from a person of knowledge of the acts
5 or events --

6 MS. PLACEK: Objection, Judge.

7 THE COURT: The objection is sustained.

8 MS. PLACEK: Thank you.

9 MR. MURPHY Q Is the information that appears
10 on the flashcard a reference to the patient who's
11 X-rayed?

12 MS. PLACEK: Objection.

13 THE COURT: The objection is sustained.

14 MR. MURPHY: May I have a moment, Judge?

15 (Whereupon there was a short
16 pause in the proceedings)

17 MR. MURPHY Q Is the X-rays that you're
18 looking at now People's Exhibit No. 15, is that X-
19 ray made near or the time that the X-ray is taken?

20 MS. PLACEK: Objection.

21 THE COURT: I'm sorry. I don't quite -- I
22 didn't understand the question.

23 MR. MURPHY: Judge, the question was was the X-
24 ray made at or near the time it was taken.

MS. PLACEK: Objection.

1 MR. MURPHY: I will rephrase the question,
2 Judge. I believe the question is unclear.

3 Q Is there a date indicated on that
4 X-ray?

5 MS. PLACEK: Objection. The exhibit speaks for
6 itself, Judge.

7 THE COURT: Overruled.

8 MR. MURPHY Q And what's the date?

9 MS. PLACEK: Objection.

10 THE COURT: Overruled.

11 THE WITNESS: The date is, it looks like
12 1/10/87.

13 MS. PLACEK: Excuse me. A continuing objection
14 as to the date, Judge.

15 MR. MURPHY Q And is it a practice there to
16 put the date on the X-ray reflecting the date that
17 the X-ray is taken?

18 MS. PLACEK: Objection.

19 THE COURT: In the normal, custom -- The
20 objection is sustained.

21 MR. MURPHY: Your Honor, she talked about the
22 procedures in August of '86. This is January of
23 '87.

24 THE COURT: The objection is sustained.

MR. MURPHY Q Were the procedures that you

1 described in 1986 for taking of X-rays, did they
2 change at all to January of 1987?

3 A No.

4 MS. PLACEK: Objection.

5 THE COURT: Are you talking about her
6 procedures or the procedures generally of the X-ray
7 Department?

8 MR. MURPHY: I will rephrase the question,
9 Judge.

10 Q Carolyn, the X-ray procedures in
11 the X-ray Department -- Strike that. The procedure
12 you described, are those the general procedures,
13 customary procedures that are used in the X-ray
14 Department?

15 MS. PLACEK: Objection.

16 THE COURT: Overruled.

17 THE WITNESS: Yes, they are there.

18 MR. MURPHY Q And were those procedures the
19 same in 1987 and January of 1987 as they were in
20 August of 1986?

21 MS. PLACEK: Foundation.

22 THE COURT: Overruled.

23 THE WITNESS: Yes, they are.

24 MR. MURPHY Q And is it the regular prac-
tice -- Was it the regular practice at Roseland

1 Community Hospital to place information about the
2 patient's name, the date that the X-ray was taken,
3 the hospital where the X-ray was taken on the
4 flashcard of the X-ray.

5 MS. PLACEK: Continuing objection, Judge.

6 THE COURT: The objection is overruled.

7 THE WITNESS: Yes.

8 MR. MURPHY Q And was that done in the
9 exhibits which you're looking at?

10 MS. PLACEK: Objection.

11 THE COURT: Objection is sustained.

12 MR. MURPHY Q Is there a flashcard with that
13 information on the X-ray which you're looking at
14 now, People's Exhibit No. 15?

15 MS. PLACEK: Objection.

16 THE COURT: Overruled.

17 THE WITNESS: Yes.

18 MR. MURPHY Q And is the X-ray that's prepared
19 in relation -- Is the X-ray that's prepared made at
20 the time that the X-ray was taken, developed at the
21 time that the X-ray was taken?

22 MS. PLACEK: Objection. Beyond the scope of
23 the witness, Judge.

24 THE COURT: As to Exhibit 15?

MS. PLACEK: That's what I think counsel is

1 speaking of, yes.

2 MR. MURPHY: Is the objection sustained, Judge?

3 THE COURT: As to Exhibit 15, the objection is
4 sustained.

5 MR. MURPHY Q Is it the regular customary
6 practice of Roseland Hospital to develop the X-ray
7 immediately on the same day the X-ray is taken?

8 A Yes.

9 Q And was that record made to your knowledge
10 at or near the time that it was taken?

11 MS. PLACEK: Objection.

12 THE COURT: Objection sustained.

13 MR. MURPHY: No further questions, Judge.

14 THE COURT: Cross.

15 MS. PLACEK: Thank you.

16 CROSS-EXAMINATION

17 BY

18 MS. PLACEK:

19 Q Ma'am, calling your attention to the date
20 and time in 1986 when you took the X-ray that you
21 testified about, how many X-rays did you take that
22 day?

23 A Of patient --

24 Q Of anybody, how many X-rays of people did
you take that day?

1 A Well, I don't remember how many I took
2 that day.

3 Q How many did you take of females?

4 A I don't remember that either.

5 Q How many did you take of males?

6 A I don't remember.

7 Q Am I correct to assume you're not a record
8 keeper, correct?

9 A No.

10 Q I'm incorrect, or are you a record keeper?

11 A Of what?

12 Q Beg your pardon?

13 A I don't understand the question.

14 Q At Roseland Hospital, do you keep records?

15 A The records I kept.

16 Q When you say you kept, are those the X-
17 rays that the State showed you that would be
18 State's Exhibit No. --

19 A They are logged in a log book, yes.

20 Q When you say they are logged in a log
21 book, do you have sole care and control of that
22 locker?

23 A No, I do not.

24 Q So even the X-rays you take you don't have
sole care and control after you take them and

1 deliver them to the doctor, correct?

2 A Correct.

3 Q Thank you. Not only that, but let's go
4 one step further, ma'am, am I correct, in dealing
5 with the X-rays, you did state your memory had to
6 be refreshed?

7 A Yes.

8 Q Am I correct in assuming you have --
9 before you were called by these gentlemen, no
10 independent recollection of the events or the
11 matters that happened on that date in 1986?

12 A Correct.

13 Q Am I correct in saying that as a matter of
14 fact, what you're testifying to is a combination of
15 what you were told to testify to and send your X-
16 rays, correct?

17 A I would say the X-rays is what I was
18 testifying to.

19 Q When you say the X-rays are what you were
20 testifying to, you have no independent memory of
21 these X-rays, correct?

22 A I can't remember I do.

23 Q I'm not blaming you, ma'am. You have no
24 independent memory of these X-rays, correct, taking
these X-rays, correct?

1 A Correct.

2 Q And I am referring specifically to
3 People's No. 14 and People's No. 13. And to the
4 best of your knowledge, these -- and referring to
5 People's No. 14 and People's No. 13 -- were kept
6 out of -- Well, put it this way bluntly, they were
7 kept in that same locker that we talked about
8 earlier, correct?

9 A Yes.

10 Q To the best of your knowledge, correct?

11 A Correct.

12 Q As a matter of fact, am I correct in
13 assuming that the only reason that you say they
14 were kept in the locker is because you conclude
15 they were, correct?

16 MR. MURPHY: Objection.

17 MS. PLACEK: It goes to personal opinion,
18 Judge, and basis for testimony.

19 THE COURT: The objection is overruled.

20 MS. PLACEK Q Isn't it correct that the only
21 reason you say these X-rays were kept in that
22 locker is because you conclude, you assume, you
23 imagine they were, correct?

24 A Excuse me, what locker are you talking
about?

1 Q The lockers where all the X-rays are kept,
2 correct?

3 A Correct.

4 Q So you have no idea, as a matter of fact,
5 whether these two X-rays, again referring to
6 People's 13 and 14, were even kept there, you just
7 assumed that, correct?

8 A Correct.

9 Q Thank you. Now, ma'am, let me ask you
10 this just as a matter of course, you've been
11 working some seven years at Roseland Community
12 Hospital, correct?

13 A Yes.

14 Q In those seven years at Roseland Community
15 Hospital, made a mistake, haven't you?

16 MR. MURPHY: Objection.

17 THE COURT: Overruled.

18 MS. PLACEK Q Correct?

19 A Correct.

20 MS. PLACEK: No further questions.

21 THE COURT: Any further questions?

22 MR. MURPHY: No.

23 THE COURT: Thank you, Miss Strong, you may
24 step down.

(Witness excused)

1 THE COURT: Call your next witness.

2 MR. CASSIDY: Michael Walker.

3 MS. PLACEK: Your Honor, there is a rap sheet
4 involved with this witness, the Court notices, and
5 the Court has signed a rule to show cause --

6 THE COURT: Did you --

7 MS. PLACEK: We've been tendered one.

8 MR. CASSIDY: I thought we tendered one.

9 MS. PLACEK: We ask before examination that a
10 rap sheet be given, Judge.

11 THE COURT: I will certainly see to it that you
12 get a rap sheet before you commence your cross, but
13 I don't know if it's fatal to you that you have it
14 before they commence their direct, but I will
15 certainly make certain that a rap sheet be given to
16 you if such a thing exist.

17 MS. PLACEK: I just guess so since I see where
18 he's coming from.

19 THE COURT: That's a reasonable conclusion or
20 speculation that you reach.

21 Bring the witness out of your lock-up.

22 MR. CASSIDY: Didn't we tell you beforehand?

23 MS. PLACEK: When you told me, why didn't you
24 give me a rap sheet?

MR. CASSIDY: Because I thought we already gave

1 you one.

2 THE CLERK: Raise your right hand, sir.

3 (Witness sworn)

4 THE COURT: You may be seated. That microphone
5 is on. If you will speak directly into it, keep
6 your voice up, we will all hear you.

7 You may proceed.

8 MR. CASSIDY: Thank you, your Honor.

9 JEROME WALKER,
10 a witness herein, called on behalf of the People of
11 the State of Illinois, after being first duly
12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY

15 MR. CASSIDY:

16 Q Sir, can you please state your name and
17 spell your last name?

18 A My name is Michael, my last name, Walker,
19 W-a-l-k-e-r.

20 Q Michael, what's your date of birth?

21 A 9/'63 -- 1963.

22 Q And what month and what day?

23 A September 14.

24 Q September 14 of 1963?

A (Nodding affirmatively).

1 Q Thank you, Michael. Calling your
2 attention to August 2 of 1988, did you have a
3 conversation with a person known to you as Jerome
4 Hendricks?

5 A Yes, sir.

6 Q Can you please look around the room and
7 see if you see Jerome Hendricks in the courtroom?

8 A Yes, sir.

9 Q Please point him out.

10 MS. PLACEK: We will stipulate he's pointing to
11 the defendant, Judge.

12 MR. CASSIDY: Accept that stipulation, Judge.

13 THE COURT: The record may so reflect.

14 MR. CASSIDY Q On August 2, 1988,
15 approximately 10:30, 11:00 o'clock in the morning,
16 did you have a conversation with Jerome?

17 A Yes, sir.

18 Q And where did this conversation take
19 place?

20 A At my father's house.

21 Q Where is that located?

22 A 12013 Princeton.

23 Q That's located in Chicago, Cook County,
24 Illinois?

A Yes, sir.

1 Q And who was present for that conversation
2 between you and Jerome?

3 A Just me and Jerome were there.

4 Q And prior to having this conversation,
5 what were you doing at your house?

6 A I was painting my father's front porch.

7 Q And was Jerome there helping you paint?

8 A No, sir.

9 Q Jerome came upon your father's porch where
10 you were painting?

11 A Yes, sir.

12 Q How did he get there?

13 A On a bike.

14 Q Was there anyone else present for the
15 conversation?

16 A No, sir.

17 Q What did Jerome Hendricks say to you, and
18 what did you say to him?

19 MS. PLACEK: Objection.

20 THE COURT: Basis?

21 MS. PLACEK: Hearsay.

22 THE COURT: Overruled.

23 MS. PLACEK: Will the Court entertain argument?
24 I believe what the State is attempting to show is -
- And I believe prior inconsistent, I would say

1 this is a former impeachment or at least that's
2 what was suggested to us before this witness took
3 the stand --

4 MR. CASSIDY: It's within --

5 MS. PLACEK: Excuse me, counsel, may I finish?

6 MR. CASSIDY: Oh, sure.

7 MS. PLACEK: Thank you. The point I am making,
8 Judge, the foundation under Gutierrez hasn't been
9 laid, your Honor.

10 THE COURT: Well, I must tell you I am not
11 certain I understand -- know the case that you just
12 referred to, but it's my judgment and understanding
13 that whatever the defendant says, whether it's
14 inculpatory or exculpatory, it is admissible, is
15 that incorrect?

16 MS. PLACEK: Judge, I would suggest it is.

17 THE COURT: State?

18 MR. CASSIDY: Judge, I believe the evidence
19 will be inculpatory.

20 MS. PLACEK: Well, with all due respect, Judge,
21 I'd ask the Court when he says inculpatory, unless
22 there's a new statement coming up, and unless
23 there's a statement when we speak of inculpatory,
24 that this defendant somehow admitted he did it to
this witness, then I would suggest that this is a

1 mistrial, and there is severe violation.

2 THE COURT: Miss Placek, I have no way of
3 knowing that, and that's not what I'm ruling on,
4 the objection on the basis of hearsay is overruled.
5 If something occurs that give rise to another
6 basis, we will hear that at that time. The objec-
7 tion is overruled.

8 MR. CASSIDY: Thank you, your Honor.

9 Q The question is, Michael, what did
10 he say to you, and what did you say to him during
11 this conversation?

12 A He said a policeman was looking for him
13 for -- He said that the police were looking for him
14 because Carlina (Phonetic) and them said he was the
15 last one who seen him with the little girl.

16 Q And did he say anything to you about that?

17 A He told me to tell the police that he been
18 with me.

19 Q And had he, in fact, been with you?

20 A No.

21 MS. PLACEK: Objection. When?

22 THE COURT: The objection is sustained.
23 Foundation, when?

24 MR. CASSIDY Q Did he tell you when you should
tell the police that he was with you?

1 A No, he didn't exactly tell me when.

2 Q Okay, what did he say to you then if the
3 police ask you?

4 A What?

5 Q What did he say to you about telling the
6 police?

7 A He told me to tell the officer that he was
8 with me.

9 Q When, though, when was he with you?

10 A That morning.

11 MS. PLACEK: Objection.

12 THE WITNESS: About 10:00 o'clock.

13 THE COURT: The objection is overruled.

14 MR. CASSIDY Q He told you to tell the police
15 to tell them the defendant was with you if they
16 asked you that question, is that what you are
17 saying?

18 A Yes.

19 MS. PLACEK: Objection as to foundation, Judge,
20 when.

21 THE COURT: When what?

22 MS. PLACEK: When the defendant supposedly
23 proffer the statement.

24 THE COURT: Lay a foundation. This
conversation is taking place between 10:30 and

1 11:00 and at 12013 South Princeton on the porch
2 between this witness and this defendant. This is
3 when he's telling him that.

4 MS. PLACEK: I understand that, but at what
5 time was there a proffer that the defendant was
6 made this request.

7 THE COURT: On August 2.

8 MS. PLACEK: No, as to -- I take it they are
9 getting into false alibi. This is the exculpatory
10 they are getting in.

11 MR. CASSIDY: Judge, the witness testified if
12 the police asked him if he was with him, tell them
13 he was.

14 MS. PLACEK: When, though, that's the point.

15 THE COURT: When?

16 MR. CASSIDY: He didn't say when. He just said
17 if the police asked him --

18 THE COURT: All right. That goes to weight,
19 which is not admissible. The objection is
20 overruled.

21 You may cross-examine him on it.

22 MR. CASSIDY Q When the defendant told you to
23 tell the police that you were with him, what if
24 anything did you say to him?

A I told him that I didn't have nothing to

1 do what he was doing, what was going on.

2 Q Did you say anything else to him?

3 A No, I just continued painting my porch,
4 and he left.

5 Q And he told you this right after he talked
6 about the missing girl, is that correct?

7 A Yes.

8 MS. PLACEK: Objection -- I will withdraw it,
9 Judge.

10 MR. CASSIDY: Could I have just a minute,
11 Judge?

12 (Whereupon there was a short
13 pause in the proceedings)

14 MR. CASSIDY Q How long had you known Jerome
15 Hendricks prior to that?

16 A I have known Jerome for 13, 14 years.

17 Q In August 9, 1988, did you have a
18 conversation with Chicago police officers?

19 A Yes, they took me down to the station.
20 They talked to me and talked to Carlina and a lot
21 more girls.

22 Q On the night of August 1, 1988, where you
23 with the defendant that night?

24 MS. PLACEK: Objection.

THE WITNESS: I seen Carlina.

1 THE COURT: Just a minute. What's the basis of
2 your objection.

3 MS. PLACEK: The basis of the objection, Judge,
4 is again as to foundation, when.

5 THE COURT: August 1.

6 MR. CASSIDY: I thought I said on the night of
7 August 1, 1988, Judge.

8 MS. PLACEK: The time, Judge.

9 THE COURT: Overruled.

10 MR. CASSIDY Q On August 1, 1988, the night of
11 August 1, 1988, were you with the defendant or were
12 you with Carlina and Yolanda?

13 MS. PLACEK: Objection to leading and
14 suggestive.

15 THE COURT: The objection is sustained.

16 MR. CASSIDY Q Who were you with on the night
17 of August 1, 1988?

18 A I was with Carlina, we were walking our
19 neighborhood looking for her.

20 Q Looking for who?

21 A The little girl, her little cousin.

22 Q Would that be Denise Ann Johnson?

23 A Yes.

24 Q Were you ever with Jerome Hendricks that
night?

1 A No, sir.

2 MR. CASSIDY: I have no further questions, your
3 Honor.

4 MS. PLACEK: Could I have a rap sheet, Judge?

5 THE COURT: Mr. Cassidy?

6 MR. CASSIDY: We ordered it.

7 THE COURT: You just ordered it?

8 MR. CASSIDY: Judge, I believe we tendered it
9 before.

10 MS. PLACEK: Judge, I --

11 THE COURT: Just a moment.

12 MR. CASSIDY: It should be over in a few
13 minutes, faxed or whatever.

14 THE COURT: That's what I was trying to get
15 out.

16 MR. CASSIDY: I'm sorry, Judge. I should have
17 made that clear.

18 (Whereupon a recess was taken
19 after which the following pro-
20 ceedings were had:)

21 THE COURT: Court is back in session.

22 MS. PLACEK: May I proceed, Judge?

23 THE COURT: You may.
24

CROSS-EXAMINATION

BY

MS. PLACEK:

Q Sir, I noticed you came in with two gentlemen in a green uniform. Does that mean you are currently incarcerated?

A Yes.

Q As a matter of fact, quite frankly you're in the State prison, is that correct?

A Yes.

Q Do you want to tell his Honor what you're in the State prison for?

A For drugs.

Q State prison for drugs. When you say drugs, are you an addict?

A No, ma'am. I was selling.

Q When you say you were selling, how many times were you, in fact, convicted for selling drugs?

A Just twice.

Q Just twice. What kind of drugs just twice were you convicted of?

A Drugs.

Q What kind?

A Cocaine.

1 Q Thank you. Were you ever convicted of
2 heroin?

3 A No, ma'am.

4 Q Let me ask you this: Have you been
5 promised any money for your testimony today?

6 A No, ma'am.

7 Q Haven't you been promised money by the
8 State's Attorney for possibly helping you when you
9 got out of prison?

10 A No, ma'am.

11 MS. PLACEK: For an offer of proof, Judge, at
12 the end of this witness' testimony, I would like to
13 put on Mr. Lufrano.

14 Q Let me ask you this, sir: Have you
15 been promised anything for testifying?

16 A No, ma'am, I wasn't promised anything.

17 Q You weren't promised anything?

18 A No, ma'am.

19 Q Calling your attention specifically to
20 August 9, 1988, you were brought down to the police
21 station, weren't you?

22 A Yes, ma'am.

23 Q As a matter of fact, you were brought down
24 there by the police, correct?

A Yes, ma'am.

1 Q As a matter of fact, when you were brought
2 down there by the police, you were, in fact,
3 questioned about the disappearance of Denise
4 Johnson, correct?

5 A They was talking to me about it.

6 Q You were questioned about the
7 disappearance of Denise Johnson, weren't you?

8 A What do you mean by that.

9 Q You were asked questions about where you
10 were at the time Denise Johnson disappeared,
11 correct?

12 A No, ma'am. I wasn't questioned like that.

13 Q When you say "No, ma'am, you weren't
14 questioned," let me ask you this: Isn't it correct
15 that the -- By the way, when I say Miranda
16 warnings, you know what these are, don't you?

17 A What?

18 Q The Miranda warnings?

19 A No, ma'am.

20 Q You don't know what the Miranda warnings
21 were?

22 A Ugh-ugh.

23 Q So in other words, when you were arrested
24 and convicted twice -- By the way, you were
arrested when you were convicted, right?

1 A Yes, ma'am.

2 Q The police never told you any Miranda
3 warnings, correct?

4 MR. CASSIDY: Objection, Judge.

5 THE COURT: The objection will be sustained.

6 MS. PLACEK Q Well, let me tell you this --
7 Let me ask you this: You know you have a right to
8 remain silent under police questioning, right?

9 A Right.

10 Q You know you have a right to have an
11 attorney present when you're being questioned by
12 the police, correct?

13 A Yes, ma'am.

14 Q You know that if you make a statement, in
15 fact, that -- to the police when they're
16 questioning you, that, in fact, that can be used
17 against you by a court of law, correct?

18 A Yes, ma'am.

19 Q Isn't it correct, in fact, that on the
20 date and time in question, I am speaking of August
21 9, 1988, the police gave you those warnings?

22 A Yes, ma'am.

23 Q Isn't it correct that the reason they gave
24 -- Strike that. I will withdraw that. Isn't it
correct that after they gave you those warnings,

1 that's when they questioned you about the
2 disappearance of the little girl, correct?

3 A Yes, ma'am.

4 Q And isn't it correct that the reason they
5 gave you the warnings is because they suspected you
6 were somehow involved in the disappearance of the
7 little girl?

8 MR. CASSIDY: Objection, your Honor, as to what
9 the police suspected.

10 THE COURT: The objection is sustained.

11 MS. PLACEK Q Isn't it correct that, in fact,
12 they asked you questions after they gave you those
13 warnings, correct?

14 A They didn't ask me like that.

15 Q They didn't ask you any questions?

16 A They didn't ask me whether I was involved
17 with the little girl's murder.

18 Q Well, let me ask you this, sir: You said
19 that you knew Carlina, correct?

20 A Carlina, correct.

21 Q And you said this was a cousin of the
22 little girl, correct?

23 A Yes, ma'am.

24 Q And you say that -- Well, let me ask you
this: Were you close friends with this young lady?

1 A What young lady, Carlina?

2 Q Carlina?

3 A Yes, ma'am.

4 Q And you say that on the second that Jerome
5 Hendricks, in fact, made certain statements to you,
6 correct?

7 A Yes, ma'am.

8 Q Did you tell Carlina?

9 A No, ma'am.

10 Q Did you tell any of the little girl's
11 family about these statements?

12 A No, ma'am, not at that time.

13 MR. MURPHY: Objection. I ask that be
14 stricken.

15 THE COURT: What be stricken?

16 MR. MURPHY: The last two questions and answers
17 about whether the witness told the people or the
18 family.

19 THE COURT: It may be, Mr. Murphy, it's just as
20 impeaching as the failure of the defendant or the
21 alibi witness to inform the police about an alibi
22 that they testified to in court. He has contact
23 with these people. He has a relationship with
24 them, and he receives information about the
whereabouts of the person he said they were looking

1 for, and he never informed them. So I'm taking
2 that it's admissible of the weight to be given to
3 it.

4 The objection is overruled.

5 MS. PLACEK Q And isn't it correct, the only
6 time you told the story that you told in court was,
7 in fact on August 9 when you were being questioned
8 by the police, correct, isn't that correct, sir?

9 A Yes, ma'am, I talked to the police.

10 Q And that's the first time you told anybody
11 the story you told today in court, correct?

12 A Yes, ma'am.

13 MS. PLACEK: May I have one moment, Judge, to
14 examine the rap sheet?

15 (Whereupon there was a short
16 pause in the proceedings)

17 MS. PLACEK Q Sir, let me ask you this: You
18 mentioned that the only time you were ever
19 convicted was, in fact, dealing with drugs,
20 correct?

21 MR. CASSIDY: Objection, Judge. That's not
22 what he testified to.

23 THE COURT: The objection will be sustained.

24 MS. PLACEK Q Well, sir, is that the only time
you have been convicted for dealing drugs?

1 A No, ma'am.

2 Q As a matter of fact, why don't you tell
3 now Judge Holt all the things you have been
4 convicted of?

5 A Just burglary and drugs.

6 Q Just burglary and drugs? Well --

7 A That's all you asked me about.

8 Q Let me ask you this: Weren't you
9 convicted in 1984 of the crime of residential
10 burglary, correct?

11 A Yes, ma'am.

12 MR. CASSIDY: Objection, Judge, not
13 impeachment.

14 THE COURT: Overruled.

15 MS. PLACEK Q What did you get?

16 MR. CASSIDY: Objection, Judge.

17 THE COURT: What is your basis of the
18 objection?

19 MR. CASSIDY: It's not relevant what he got
20 sentenced to.

21 THE COURT: This is the witness and not the
22 defendant?

23 MR. CASSIDY: Correct.

24 THE COURT: And the rules that apply to cross-
examining witness in regard to prior convictions

1 are distinctly different from the rules that are
2 applied to the defendant, and the question of his
3 incarceration, whether or not he was incarcerated
4 are admissible.

5 The objection is overruled.

6 MS. PLACEK Q What did you get?

7 A I got seven years.

8 Q Was that for one residential burglary or
9 how many?

10 A One.

11 Q Let me ask you this: Were you ever
12 convicted after that -- Strike that -- before that?

13 A Yes, I had a case in '82.

14 Q And why don't you tell his Honor, Judge
15 Holt, about that case in '82?

16 A It was a burglary.

17 Q And what did you get?

18 A Four years.

19 Q Did you ever get convicted of burglary
20 tools?

21 A No, not that I remember, no.

22 Q Well, let me ask you this: On 9/9/82,
23 didn't, in fact, you get found guilty of possession
24 of burglary tools and get sentenced to imprisonment
four years in the Illinois Department of

1 Corrections?

2 A I got a sentenced to a burglary, yes.

3 Q Well, let me ask you this --

4 A I don't know if it was two, it was a long
5 time ago.

6 Q Didn't in 1982 you get two separate
7 sentences?

8 A No, ma'am.

9 Q So in other words, you were just,
10 according to your testimony, sentenced to burglary
11 for three years and possession of burglary tools
12 for four years in 1982?

13 MR. MURPHY: Objection, Judge. That's the same
14 question.

15 MS. PLACEK: He gets a chance to deny what I
16 could possibly impeach, Judge.

17 THE COURT: Overruled.

18 MS. PLACEK Q Is that your testimony?

19 A I just know I was sentenced to a burglary.

20 Q Just a burglary? Thank you. So
21 possession of burglary tools for four years would
22 be incorrect, correct?

23 A I don't know nothing about no --

24 Q Sentenced to three years for burglary
would be correct?

1 A I got a four-year sentence.

2 MR. CASSIDY: Objection.

3 THE COURT: Sustained.

4 MS. PLACEK Q Let me ask you this: Calling
5 your attention to 1980, were you ever sentenced
6 there?

7 A No, ma'am.

8 Q Well, let me ask you this: On 12/2/1980,
9 were you, in fact, sentenced to probation and
10 imprisonment for burglary, then?

11 A Not imprisonment, but I was on probation.

12 Q Did you receive a sentence for probation
13 imprisonment two years?

14 A I got probation for two years.

15 Q Thank you. And that was for what?

16 A I think a burglary.

17 Q How many names do you use?

18 MR. MURPHY: Objection.

19 THE COURT: Overruled.

20 MS. PLACEK Q How many names do you use?

21 A I use my name and my nephew name.

22 Q Your nephew's name by the way isn't your
23 name, that's a lie?

24 A Yes.

Q Not only that, you used it so you can

1 mislead, correct?

2 MR. MURPHY: Objection.

3 THE COURT: Overruled.

4 MS. PLACEK Q Correct?

5 A Yes, ma'am.

6 Q You used it to lie to the authorities,
7 correct?

8 A Yes, I did.

9 Q You used it to lie to the authorities to
10 get out of punishment, correct?

11 A Yes, I did.

12 Q Thank you. By the way, Darnel, is that
13 your nephew's name?

14 A Yeah.

15 Q Do you have any tattoos?

16 A Yes, ma'am.

17 Q Are those gang tattoos?

18 A No, ma'am.

19 MR. MURPHY: Objection.

20 THE COURT: Overruled.

21 MS. PLACEK Q You have a tattoo on your left
22 and right arm?

23 A Yes, ma'am.

24 Q You can see them, correct?

A Yes, ma'am.

1 Q Will you show them to his Honor, Judge
2 Holt for the purpose of the record?

3 MR. CASSIDY: Objection, Judge.

4 THE COURT: What's the basis of your objection?

5 MR. CASSIDY: What relevance?

6 THE WITNESS: (Indicating)

7 THE COURT: Objection is overruled, Mr. --

8 MR. CASSIDY: It isn't relevant --

9 THE COURT: It is relevant whether or not a
10 person has a --

11 MR. CASSIDY: A tattoo.

12 THE COURT: It depends on what the tattoo
13 depicts. A simple tattoo may be of no relevance.
14 The pitch fork may very well be of some relevance,
15 and I think you pretty well know that.

16 MR. CASSIDY: I don't know that, but now I do.

17 MR. MURPHY: It could be an affiliation just
18 like anything else.

19 MR. CASSIDY: Maybe he's a farmer.

20 THE COURT: It could be just an affiliation or
21 membership in an association or club, and it is for
22 the trier of fact to determine what if any weight
23 to be given to the fact of that association and
24 membership in that glee club or boy's club or
whatever other organization you may choose to

1 associate it with.

2 MR. CASSIDY: Judge, for the record, would
3 you --

4 MS. PLACEK Q Why don't you show your glee
5 club tattoo to the Judge. By the way, they're not
6 from a glee club, are they?

7 A No.

8 Q They're not from a boy scout club?

9 A No.

10 MR. CASSIDY: Farmer's club.

11 MS. PLACEK Q Farmer's club, you're not a
12 farmer, are you?

13 MR. MURPHY: Objection, Judge.

14 THE WITNESS: Indicating)

15 THE COURT: One on his right arm appears to be
16 a dollar sign with an S and a G on either side of
17 it. The one on the right arm seems to be a skull
18 and cross bones or whatever.

19 MR. CASSIDY: Thank you, your Honor.

20 MS. PLACEK Q That's all, your Honor.

21 THE COURT: Redirect?

22 MR. CASSIDY: Thank you, your Honor.

23 MS. PLACEK: Excuse me, your Honor. May I
24 reopen for a moment?

THE COURT: Yes.

1 MS. PLACEK Q You knew the little girl was
2 missing on the 2nd, correct?

3 A Because Jerome told me that the police
4 were looking for the little girl.

5 Q When you say they were looking, didn't you
6 just tell his Honor, Judge Holt, that on the 1st,
7 you were looking for her, too?

8 A Yes.

9 Q Well, you really knew she was looking,
10 correct?

11 A No --

12 Q Missing, correct? Let me ask you this:
13 You knew her relatives, correct?

14 A Yes, I knew some of them.

15 Q Well, you knew --

16 A Just Carlina.

17 Q You knew Carlina pretty well, correct?

18 A Right.

19 Q And according to your testimony, what
20 you're saying today for that man, you said Jerome
21 said that the police were involved, correct?

22 A The police were involved.

23 Q The police were looking for her, too,
24 correct?

A Jerome told me that the police were

1 looking for him.

2 Q Involving the little girl, correct, that's
3 what you're saying today, correct?

4 A That's what it's supposed to be, yes.

5 Q Let me ask you this: It wasn't until the
6 9th that you were brought down to the station and
7 questioned by the police that you let anybody know,
8 right?

9 A Let anybody know?

10 Q About this conversation that allegedly
11 took place with Jerome, correct?

12 A Because I didn't want nothing to do with
13 it then.

14 Q Right. Thank you.

15 That's all, Judge.

16 THE COURT: Redirect?

17 MR. CASSIDY: May I proceed, your Honor?

18 THE COURT: You may.

19 REDIRECT EXAMINATION

20 BY

21 MR. CASSIDY:

22 Q Now, the first time you met me was today,
23 is that correct, Michael?

24 A Yes, sir.

Q And what I told you was that if you

1 testified truthfully today that myself and John
2 Murphy would write a letter to the warden where you
3 are staying and tell him that you testified
4 truthfully today and leave it up to him what will
5 take place with you, is that correct?

6 A Yes, sir.

7 Q Now, we didn't promise you anything about
8 us reducing your sentence, correct?

9 A No, sir.

10 MS. PLACEK: Objection.

11 THE COURT: I'm sorry?

12 MS. PLACEK: No questions asked, Judge.

13 THE COURT: Overruled.

14 MR. CASSIDY Q We would write a letter to the
15 warden to tell him you testified in court
16 truthfully and ask him to take into consideration
17 any parole or anything like that, is that correct?

18 A Yes, sir.

19 Q And Mr. Murphy also told you that upon
20 your release, if he's still with the office and if
21 you got a hold of him, he may, if it's okay with
22 our office, give you one-month's rent to relocate,
23 is that right?

24 A Yes, sir.

MS. PLACEK: Objection. The State is now

1 impeaching his own witness, Judge.

2 THE COURT: Overruled.

3 MR. CASSIDY Q Not money to you, but just
4 money for you to relocate, isn't that correct, for
5 one month?

6 A That's right, sir.

7 Q Now, Jerome, you told the police, did you
8 not, on August 9th -- I'm sorry -- Michael, you
9 told the police on August 9 that Jerome came to
10 your house while you were painting, right?

11 A Right.

12 MS. PLACEK: Objection. Improper for redirect,
13 Judge.

14 THE COURT: What's the purpose?

15 MR. CASSIDY: Judge, prior consistent
16 statement.

17 THE COURT: Prior consistent statement?

18 MR. CASSIDY: Right, what he's testified to
19 today.

20 THE COURT: How is a prior consistent statement
21 admissible?

22 MR. CASSIDY: I believe counsel brought out
23 possible motive for Michael Walker here to be
24 fabricating his testimony today based upon us, the
State and with all the prior convictions and

1 promises made.

2 THE COURT: It seems to me what she brought out
3 was the fact that the witness made a prior
4 consistent statement on August 9.

5 MR. CASSIDY: Correct, but she really didn't go
6 into details.

7 THE COURT: I know, but the details are not
8 admissible of his prior consistent statement unless
9 there is an inference or an insinuation that his
10 testimony has recently been fabricated. She's not
11 doing that. She's saying that he didn't, in fact,
12 tell the police what he said he told the police.

13 MR. CASSIDY: I believe or more or less showing
14 that, but I would like the details -- Just because
15 she's not contesting it, she did contest his motive
16 to be testifying.

17 THE COURT: Prior consistent statements are not
18 admissible evidence, Mr. Cassidy, except under
19 certain circumstances, and the circumstances are
20 not present here. The objection is sustained.

21 MR. CASSIDY: I have no further questions,
22 thank you, your Honor.

23 THE COURT: Recross?
24

RECROSS-EXAMINATION

BY

MS. PLACEK:

Q Do you remember when I asked you had you been promised anything for testifying?

A Yes, ma'am.

Q You forgot to tell his Honor, Judge Holt, under my questioning about that letter, correct?

MR. CASSIDY: Objection.

THE COURT: Sustained.

MS. PLACEK Q Did you remember that letter when I asked you that question?

MR. CASSIDY: Objection, your Honor.

THE COURT: Sustained.

MS. PLACEK Q Did you tell me about the letter when I asked you about it?

MR. CASSIDY: Objection.

THE COURT: Objection is sustained.

MS. PLACEK Q How much money are you getting for this relocation?

A It wasn't no promises of giving me. They're saying what they probably could do for me.

Q I see. Did they say anything else besides those things that you now remember that they can do for you?

1 MR. CASSIDY: Objection, your Honor.
2 Argumentative.

3 THE COURT: Overruled.

4 THE WITNESS: The thing he said out of his
5 mouth is what he said to me.

6 MS. PLACEK Q Out of his mouth? Thank you.

7 That's all, Judge.

8 THE COURT: Anything further?

9 MR. CASSIDY: No, Judge. Thank you.

10 THE COURT: Thank you, Mr. Walker, you may step
11 down.

12 (Witness excused)

13 THE COURT: Call the witness. He will have to
14 come back if we don't finish.

15 THE CLERK: Raise your right hand, sir.

16 (Witness sworn)

17 THE COURT: That microphone is on. If you will
18 speak directly in this, keep your voice up, we will
19 all hear you.

20 You may proceed.

21 ROBERT TOVAR,
22 a witness herein, called on behalf of the People of
23 the State of Illinois, after being first duly
24 sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY

MR. MURPHY:

Q Would you please state your name and spell your last name?

A Robert Tovar, T-o-v-a-r.

Q And by whom are you employed?

A Chicago Police Department.

Q And how long have you been employed with the Chicago Police Department?

A Approximately 25 years.

Q And what's your position with the Chicago Police Department?

A I'm a technician with the crime laboratory.

Q And where do you work at, Mr. Tovar?

A In the crime laboratory, 1121 South State.

Q Officer Tovar, I'd like to direct your attention to the evening hours of August 8, 1988, late in the evening, were you working that particular day?

A Yes.

Q And did you come into contact with any individual that you see in court today?

A Yes.

1 Q Could you please point to that individual
2 and indicate an article of clothing?

3 A The gentleman with the sweater and his
4 hands clasped (Indicating).

5 MR. MURPHY: May the record reflect in-court
6 identification of the defendant, Jerome Hendricks,
7 your Honor?

8 THE COURT: Yes, it may.

9 MR. MURPHY Q Officer Tovar, could you explain
10 to Judge Holt when you came into contact with the
11 defendant?

12 A At about 10:30 at night.

13 Q And where was that at?

14 A At the crime lab.

15 Q That would have been at 11th and State?

16 A Yes.

17 Q Who was with the defendant at the time you
18 observed him?

19 A There were two detectives.

20 Q Would that be Detective Michael Rolland
21 and Michael Davis?

22 A Yes.

23 Q Officer Tovar, when you observed the
24 defendant around 10:30, can you explain what
happened?

1 A When I talked to the defendant, I gave him
2 a form, with respect to his rights, I guess you
3 want to use that before I talked to him.

4 Q And when you gave him that form -- Strike
5 that.

6 MR. MURPHY: For the record, I'm going to mark
7 People's Exhibit No. -- mark People's Exhibit No.
8 16, Judge.

9 May I approach?

10 THE COURT: You may.

11 MR. MURPHY Q Officer Tovar, I'm going to show
12 you what's been marked as People's Exhibit No. 16,
13 do you recognize what that's a copy of?

14 A Yes.

15 Q What is that?

16 A That's the form I gave Mr. Hendricks.

17 Q Now, the original census that day has been
18 destroyed, has it not?

19 A Yes.

20 Q That's a copy made from the microfiche?

21 A Yes.

22 Q Officer Tovar, could you describe what you
23 did with the defendant with relation to that form?

24 A I read the form to him before I talked to
him.

1 Q And could you read to Judge Holt what --
2 from the form the portions you read to the
3 defendant exactly as you read them to the
4 defendant?

5 A Yes, I said several times you go through
6 a ritual with any --

7 MR. LUFRANO: Objection to what he goes to.
8 He's asked what he did.

9 THE COURT: The objection is sustained.

10 MR. MURPHY Q Just describe what you did in
11 this case?

12 A Sure. I used my finger and went through
13 line by line, and I read to the subject from the
14 form, and I put the form directly in front of him.
15 I read is your name Jerome Hendricks? I have your
16 name down here, Jerome Hendricks. It was corrected
17 because I misspelled it. I have today's date,
18 8/August, '88. I have the address, the location
19 where you're at, 1121 South State Street, Chicago,
20 Illinois, and the reason why he's here, and I have
21 it's the death of a Denise Johnson, which occurred
22 on 8/August, 1988 at 251 West 117th Street. Then I
23 read the paragraph here, and the first line it
24 says, "I understand I have a right to remain
silent, and then anything I say can be used against

1 me in a court of law." I asked him if he
2 understood that. He acknowledged he did. I went
3 to the next line again with my finger under the
4 line, and I read, "I understand I have a right to
5 talk to a lawyer and have him present with me
6 during questioning. If I could not afford a
7 lawyer, one would be appointed from the court to
8 represent me before any questioning." I asked him
9 if he understood that. He acknowledged he did.
10 Then I read the next line again with my finger
11 going across the line. It says, "I understand I
12 have a right to stop the questioning anytime and
13 stop the questioning for the purpose of consulting
14 a lawyer," and I asked him if he understood that,
15 and he said he did.

16 Q Now, there's other things contained in
17 that form, and I won't ask you to go through that,
18 but if you could bypass that and tell me did you
19 have a conversation with the defendant after --
20 Strike that. If I can at some point when you got
21 near the bottom of this form, you had him sign the
22 form, is that correct?

23 A That's correct.

24 Q And after he signed the form, what did you
do?

1 A I signed it.

2 Q And is that your signature and his
3 signature on the form?

4 A Yes.

5 Q And is this exhibit People's Exhibit No.
6 a true and accurate copy of the form that you
7 used?

8 A Yes.

9 Q And, Officer Tovar, did you at this time
10 ask the defendant certain questions?

11 A I did.

12 Q With respect to this incident?

13 A Yes.

14 Q And when you asked those questions, did
15 you receive any answers from him?

16 A Yes.

17 Q And what questions did you ask him?

18 MS. PLACEK: Objection, and I ask to be heard
19 outside the presence of the witnesses. This is
20 what I anticipated taking the time, Judge.

21 THE COURT: Tell me what the basis of your
22 objection is.

23 MS. PLACEK: The basis of the objection, Judge,
24 and it's no secret to the Court because the Court
heard the motion because this gentleman is a

1 polygraph operator. What the State is seeking to
2 introduce, and the answers they are seeking to
3 introduce was taken as part of a polygraph test.
4 This would be the assumption I am making at this
5 time, and I was led to believe, it's part of the
6 motion. The defense's --

7 THE COURT: Mr. Murphy?

8 MR. MURPHY: Judge, we are not -- Obviously
9 we're aware of what the Court's rulings are with
10 respect to polygraph testing, and we specifically
11 instructed the officer to stay away from that area.
12 That was brought up by counsel. All we intend to
13 get into is the content of the conversation, not
14 anything with regard to the taking of the test,
15 what the result of the test was or anything along
16 those lines. We are aware of the Court's ruling.

17 THE COURT: Under what circumstances did these
18 questions -- this question and answer -- Under what
19 circumstances did this question-and-answer session
20 arise?

21 MR. MURPHY: I am not sure if I understand your
22 question, Judge.

23 THE COURT: What was the circumstances which
24 give rise to the question-and-answer session that
the witness and the defendant were having? Is he

1 being subjected to a polygraph examination at this
2 time?

3 MR. MURPHY: Yes, Judge.

4 THE COURT: He's hooked up to a polygraph
5 machine?

6 MR. MURPHY: That's my understanding.

7 THE COURT: And he's asking him questions, and
8 the defendant is making answers, and the polygraph
9 machine is running and recording the answers?

10 MR. MURPHY: That's my understanding, Judge.

11 THE COURT: I don't know the answer to it,
12 Mr. Murphy, and I don't think we are going to
13 resolve it tonight within the next five to ten
14 minutes.

15 MS. PLACEK: This is the point where I
16 suggested, Judge, that we would have a problem. It
17 would be the defense's contention, Judge, that the
18 Illinois law for business such --

19 THE COURT: I understand what you contention
20 is, and whether or not it goes as far as you say it
21 goes, I don't know that off the top of my head at
22 any rate. That's where I am going to try to rule
23 on it tonight. I can tell you what my general
24 impression is of the law which has nothing
whatsoever to do with the area that we are in now

1 because i don't recall ever having seen a case
2 quite like this, quite under these same circum-
3 stances, but every case that I've ever seen which
4 deals with anything at all regarding polygraph and
5 you -- I know you haven't mentioned polygraph, but
6 the failure to mention it doesn't -- may not be
7 sufficient because once the defendant starts to
8 meet it, if you never mentioned polygraph, it's
9 going to emerged, and once polygraph emerges,
10 you've got the problem, you may have, I don't know.

11 MR. CASSIDY: We haven't finished our direct.

12 THE COURT: if they don't cross-examine him, it
13 will never come up.

14 MR. CASSIDY: They can cross-examine all they
15 want.

16 THE COURT: The point is this, gentlemen, and
17 I'm being a little levitied (Phonetic) into the
18 situation, which probably has no levity -- no place
19 as levity at all. I don't know the answer, but I
20 have not seen a case which has questioned the
21 polygraph on any level, and so your task, Mr.
22 Murphy and

23 Mr. Cassidy, overnight with your access and law and
24 all those good things you have in your office to
aid and research is to conference me that this

1 testimony is admissible evidence.

2 The defense, on the contrary, has the
3 burden of helping me to -- if they choose to, of
4 showing me that this is not proper evidence, and I
5 will do whatever I can to help resolve it, also,
6 but I'm not going to have as much time as you folks
7 have.

8 MR. MURPHY: Judge, I understand what the Court
9 is indicating, but the defense is making a motion
10 here, and we will do some research on this.
11 There's no authority to what they are saying --

12 THE COURT: They are saying the polygraph
13 testimony is inadmissible in Illinois in any form
14 and any fashion, and you're saying we're not
15 talking about polygraph, we are just talking about
16 a conversation that the fellows were having down at
17 the ranch one night, and, of course, the defense
18 says that what you can't do, you cannot do
19 indirectly and by subterfuge.

20 MR. CASSIDY: No, that's not the case. I think
21 you're viewing it that way, Judge, you're drawing
22 the conclusion. I mean it's a straight question
23 and answer. If you look at it that way, a trier of
24 fact with your experience --

THE COURT: Down at the ranch with the boys.

1 MR. CASSIDY: With your experience and trier of
2 fact, they wouldn't consider polygraph, and I
3 believe with all due respect, that's how you should
4 be viewing it.

5 THE COURT: You may be right, Mr. Cassidy.

6 MR. CASSIDY: But there appears to be a Motion
7 in Limine at this point by the defense.

8 THE COURT: No, it appears to be a motion that
9 says -- The objection that says, Judge, this
10 violates the law in Illinois, and I'm simply saying
11 to you --

12 MR. CASSIDY: I understand what you're saying.
13 I am just saying you're jumping to a conclusion
14 which the defense put in your mind.

15 THE COURT: Maybe. I thought the Supreme Court
16 of Illinois put into my mind --

17 MR. CASSIDY: Judge, you wouldn't have known
18 what was going on here if they didn't tell you.

19 THE COURT: Mr. Cassidy, I'm not required, I
20 don't think, to be any dumber than the average
21 juror. I am as dumb as the box of rocks, but I am
22 not required to be any dumber than any juror.

23 MR. CASSIDY: I think you are, Judge. You're
24 jumping to a conclusion.

THE COURT: When he tells me he's down at the

1 ranch at 11:00 o'clock at night having a
2 conversation with the defendant after having him
3 sign forms, what do you think I am going to
4 conclude he is?

5 MR. CASSIDY: The same form that any police
6 officer gives him.

7 THE COURT: All right. Order of Court,
8 February 13.

9 Mr. Tovar, I'm afraid you will have to
10 return.

11 (Which were all the proceedings
12 had in the above-entitled cause
13 and the case continued to Wednesday,
14 the 13th day of February, 1991.)
15
16
17
18
19
20
21
22
23
24

STATE OF ILLINOIS }
COUNTY OF COOK } ss

I, AURELIA PUCINSKI, Clerk of the Circuit Court of Cook County, in said County and State, and Keeper of the Records and Seal thereof, do hereby certify the above and foregoing to be a true, perfect and complete copy of VOLUME FIVE OF A SIX VOLUME RECORD CONSISTING OF THE REPORT OF PROCEEDINGS, ONLY. NO PRAECIPE HAVING BEEN FILED PURSUANT TO THE NOTICE OF APPEAL FILED IN THE APPELLATE COURT UNDER APPELLATE COURT NO. 95-0474.

in a certain cause LATELY pending in said Court, between The People of the State of Illinois. WERE, Plaintiffs and JEROME HENDRICKS WAS, Defendant.

Witness: AURELIA PUCINSKI,

Clerk of the court, and the Seal thereof, at Chicago

In said County, JUNE 25, 1996..



Aurelia Pucinski
Clerk

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

CCCR-310

95-474

**Transcript of Record
Appeal
to**

APPELLATE

**Court of Illinois
District**

FIRST

FILED
APPELLATE COURT
JUL 10 1996
GILBERT S. MARCHINI
CLERK

SUPPLEMENTAL RECORD

Circuit Court No. 88 CR 12517

Trial Judge LEO H. HOLT

Reviewing Court No. 95-0474

THE PEOPLE OF THE STATE OF ILLINOIS

VS.

JEROME HENDRICKS

from

CIRCUIT COURT

of

COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT, CRIMINAL DIVISION

ORDER ENTERED

JAN 1 / 2007

APPELLATE COURT, FIRST DISTRICT

AURELIA PUCINSKI

Clerk of Court

VOLUME SIX OF SIX VOLUMES
SUPPLEMENTAL RECORD

Per AP/nd

Deputy

RJP

1 IN THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT
2 COOK COUNTY, ILLINOIS

3 THE PEOPLE OF THE)
4 STATE OF ILLINOIS,) Criminal
5 Plaintiff,) No. 88CR12517
6 vs.) Charge: Murder
7 JEROME HENDRICKS,)
8 Defendant.)

9
10 JURY TRIAL

11 Court commenced pursuant to
12 continuance, February 13, 1991, before the
13 Honorable LEO E. HOLT and a jury, at 2:00
14 o'clock p.m.

15 PRESENT:

16 MR. SCOTT CASSIDY,
17 MR. JOHN MURPHY,
assistant State's Attorneys,
for the People;

18 MS. MARIJANE PLACEK,
19 MR. VINCENT LUFRANO,
assistant Public Defenders,
20 for the Defendant.

21 -----

22 Rella R. Jordan,
23 Official Court Reporter
24 Markham, Illinois, 60426

1 THE COURT: Both sides ready?

2 MR. MURPHY: Yes.

3 MS. PLACEK: Yes.

4 THE COURT: Last Thursday when we
5 recessed the trial of this case, the witness,
6 Robert Tovar, was on the stand.

7 MR. MURPHY: That was Monday, Judge.

8 THE COURT: All right, Monday.

9 Okay. The intervening holidays threw me
10 off a bit.

11 When Mr. Tovar was here, the defense
12 raised an objection that his testimony instigated
13 a devor prolilig{} testimony and I have tried to
14 look up that proposition and have identified as
15 nearly as I can certain propositions. And
16 according to Grahams Handbook of Illinois 5th
17 edition, Section 403.2, Page 173, the following
18 appears:

19 Quote: Statements made by
20 a person before, during or
21 after being administered a lie
22 detector test are admissible.

23 "People versus Sickley, S- I- C- K- L- E-
24 Y- 114 Illinois Appellate 3rd, 167, 69 Illinois

1 decision, 94, 448 Northeast 2nd, 612, 1983, closed
2 quote.

3 And so I hasten to read what the Court
4 said in People versus Sickley, and People versus
5 Sickley which appears at 114 Illinois Appellate
6 3rd and 167, we find the following at Page 172:

7 Quote, the State argues that despite the
8 fact that our Supreme Court has held that
9 polygraph results are not admissible, (People
10 versus Baines, B- A- I- N- E- S-), 88 Illinois 2,
11 235, Northeast, 1070, closed paren. This does not
12 preclude the introduction into evidence of
13 statements obtained after a polygraph examination
14 is administered. We agree. Closed quote.

15 That's the extent to which Sickley
16 corroborates or supports, it supports, what Cleary
17 and Graham said in their treatises on Illinois
18 evidence.

19 I turn then to Mr. Hunter's Trial
20 Handbook for Illinois lawyers criminal, the 6th
21 edition, Section 38.18, at Page 509, where the
22 following is found:

23 Quote: While the results of
24 a polygraph test are not

1 admissible, that does not
2 preclude the introduction into
3 evidence of statements
4 obtained after the polygraph
5 examination is administered
6 provided they are given
7 voluntary, closed quote.

8 And they cite again People versus
9 Sickley.

10 That's the extent to which I can find any
11 support for the proposition that a conversation
12 had by a polygrapher with a defendant before,
13 during or subsequent to the administering of a
14 polygraph examination that that conversation is
15 admissible in evidence.

16 The other cases tend to suggest to me, at
17 least, that if admissible, it is fraught with
18 danger. I invite your further educating me. If
19 you have had an opportunity to look at this
20 subject matter, it's all that I can find in the
21 limited time that I had to deal with it. Some
22 states, maybe most, maybe a majority of the states
23 tend to follow the Illinois rule. There are some
24 exceptions, however, but Illinois is, as far as I

1 have been able to determine, what one might
2 characterize as being vehemently anti-polygraph.
3 So I invite you to address that problem, if you
4 choose to.

5 MS. PLACEK: The State was going to brief
6 that, Judge, so I was waiting for them.

7 THE COURT: Well, the State is proffering
8 the evidence so you have got the burden to
9 overcome.

10 So I will hear from the State.

11 MR. MURPHY: Well, Judge, at this point,
12 if I may, perhaps, I didn't understand the Court.
13 Will the Court allow the evidence in then?

14 THE COURT: Not unless you can show me
15 how it's going to be admissible. I don't think
16 what I read to you and certainly Shipley, Shipley
17 doesn't stand for the proposition that a
18 conversation by a polygrapher and the defendant
19 before, or during the administering of the
20 examination is admissible.

21 Shipley -- Sickley, I mean, may at best
22 stand for the proposition that subsequent to a
23 polygraph examination, and the defendant having
24 been confronted with the results of the

1 examination may thereafter have a conversation
2 with a polygrapher which will become admissible.
3 That is the best that I can get out of Sickley,

4 And given -- I don't know -- the rules of
5 evidence don't change because of the form that the
6 defendant is being tried in changes. If this were
7 a jury trial, I have almost no doubt in my mind
8 that you couldn't proffer this evidence to the
9 jury and thereby bar the defendant from showing to
10 the jury the circumstances under which the
11 statement was taken, which would immediately evoke
12 conversations about polygraphs, which is
13 inadmissible.

14 Showing the fact-finder that the
15 defendant took the polygraph examination is
16 reversible error, because the inference is, of
17 course, that he failed it. And I don't know how
18 the defendant would cross examine this polygrapher
19 in order to show the totality of the circumstances
20 without showing that he was being polygraphed.
21 But if you know of some authority that is to the
22 contrary of what I just suggested, I will hear it
23 and further consider it, but right now my
24 inclination is to say to you that the conversation

1 is not admissible.

2 MR. MURPHY: Judge, our position is
3 simply this: I'm aware of some legal authority on
4 polygraph testing and, first of all-- and I'm
5 aware also that the case law clearly hold that the
6 result of a polygraph test or the fact that a
7 polygraph test was taken is clearly inadmissible.

8 And, I'm sure your Honor is well aware
9 that we had no intention of eliciting that
10 evidence. That was brought to your attention not
11 by us but by the defense when the witness was
12 testifying.

13 Your Honor, I am not aware of any case
14 law that precludes the State from introducing a
15 statement that was made by the defendant.
16 Whatever the circumstance may be we do not intend
17 to get into a situation where he's got to and has
18 taken a polygraph test.

19 And, therefore, your Honor, it's our
20 position we are not precluded from introducing
21 into evidence statements which the defendant made.
22 Other than that, Judge, I would have no further
23 argument.

24 If the Court is going to reject--.

1 THE COURT: Do you know of any case in
2 this jurisdiction or any other jurisdiction that
3 has accepted that proposition?

4 MR. MURPHY: No, Judge, but I know of no
5 case that precludes it.

6 THE COURT: I don't know either, but then
7 I haven't looked. But it would seem to me that
8 the frequency with which the questions posed and
9 the answers made during a polygraph examination
10 are so likely to be inculpatory that you would
11 find the Courts resolving that issue. If trial
12 courts have been allowing it in with any degree of
13 frequency, it clearly would be reported somewhere
14 in the Illinois Reports.

15 One of the reasons that it may not appear
16 is because trial courts have adhered strictly to
17 the Supreme Court's ban on any evidence even
18 remotely alluding to the proposition that the
19 defendant has been the subject of a polygraph
20 examination. So the dirth of cases or the failure
21 follow cases, find cases may be of some value in
22 the absence of a -- you know one of the cases that
23 I read, I didn't read the case, but I was reading
24 Mr. Cleary's work, talked about the dangerousness

1 of even alluding to the proposition of polygraph.

2 Ms. Placek, what does your research if
3 any show on this area.

4 MS. PLACEK: Judge, I too went to Cleary
5 as a starting point.

6 In the Sickley Case, I believe exactly it
7 discussed the fact with the defendant's right of
8 due process being cut off by, in fact, the
9 inability to cross examine without bringing up the
10 circumstances of the statement, therefore, it must
11 be brought out that it was done in a question and
12 answer period with answers being -- if you will
13 suggested to a yes-no circumstance involving the
14 material of a polygraph test itself.

15 We have read the cases this morning, as a
16 matter of fact, which the Court referred to. It
17 would be our contention, as we objected at the
18 last court date, Monday afternoon, that this
19 gentleman because of the nature of work and
20 because of the status of Illinois case law should,
21 in fact, be barred from testifying.

22 MR. MURPHY: Judge, may I make one brief
23 argument in response? Something, I really should
24 have addressed initially.

1 Judge, one witness testified with regard
2 to the statements, a witness, by the name of Larry
3 Nitsche, N- I- T- S- C- H- E-, I believe, and this
4 does not help the Court in terms of polygraph
5 questions, but certain questions were asked by
6 myself and he was not allowed to answer those
7 questions because the defendant did not give
8 information in certain areas, where he was not
9 asked certain questions.

10 One of the purposes of introducing
11 testimony of this specific witness is to show the
12 various specific questions were asked to the
13 defendant and the nature of the statement. This
14 does not help the Court in resolving that issue
15 but that is the purpose of this witness testifying
16 at this point in the trial.

17 THE COURT: Well, I'm going to allow you
18 to make an offer of proof as to what your evidence
19 would show for whatever value it may become to you
20 at some subsequent date but it doesn't seem to me
21 that you are right that does not answer or aid me
22 in trying to resolve this problem.

23 I'm more concerned with the artificial
24 nature of what the defendant has to do in this

1 situation in trying to meet this testimony.

2 This testimony is not just out there in a
3 vacuum and it is not as to two of the boys down at
4 Joes's Place having a conversation, and since the
5 defendant would have, I would assume, be entitled
6 to show all of the circumstances around this
7 conversation in order for me to assess, One, it's
8 voluntariness; and 2, whether or not, it's weight,
9 it's credibility, and as soon as he undertakes to
10 do that, he's going to start having to talk about
11 polygraph examinations, and that's what the
12 Illinois Courts have, as I understand it, they are
13 strictly forbidden.

14 So the defendant's objection is sustained
15 and I'll not permit Mr. Tovar to testify about a
16 conversation that he had with the defendant on
17 August 8, 1988, on the evening hours at
18 approximately 10:30 p.m. during the time that the
19 defendant was hooked to a polygraph machine.

20 MR. MURPHY: Judge, what about pretest
21 questions? Do you have any problem with that?

22 THE COURT: Yeah.

23 I suppose Sickley would, at least, stand
24 for the proposition that subsequent to the

1 polygraph examination, statements made by the
2 defendant would be admissible, but prepolygraph
3 statements are just as much barred because they
4 are in preparation for the polygraph. It is in
5 some respect, even if he's not hooked up to the
6 machine, as of yet, whether he's being asked
7 questions for representative samples of
8 configurations, for lack of a better term, he is,
9 at least, in the process of aiding the polygrapher
10 in formulating questions and otherwise assisting
11 in the presentation of the examination. It's the
12 same thing.

13 As I said, when I saw Cleary's
14 proposition in Mr. Cleary's book, I thought
15 perhaps that the Sickley Case was going to resolve
16 it for me. And unfortunately, I think Mr. Cleary
17 just overstated the reach of the Sickley Case, as
18 is often the case, and the cite in the case goes
19 much further in his book than the case actually
20 goes.

21 Or call Mr. Tovar back, if you have some
22 other questions, or call your next witness.

23 MR. MURPHY: I do have some other
24 questions.

1 MS. PLACEK: If it pleases the Court, if
2 the State is alleging that the defendant made a
3 statement after this testing, then we would be
4 objecting on Discovery.

5 THE COURT: I don't know if that's what
6 they are doing.

7 MR. MURPHY: Judge, I don't know what
8 Counsel is referring to.

9 THE COURT: I don't know either, so we'll
10 have to wait and see.

11 MS. PLACEK: I am just informing this
12 Court, Judge, that the objection would be made at
13 this time that we haven't been tendered any
14 statements made after the matter as requested by
15 our Motion for Discovery.

16 MR. MURPHY: Judge, there were statements
17 made at other times by two other police officers.

18 THE COURT: Mr. Murphy and Ms. Placek,
19 we'll deal with that when we see what this witness
20 is going to testify to.

21 (Whereupon the following
22 proceedings were had in
23 the hearing and presence
24 of the jury:)

1 R O B E R T T O V A R, {}
2 called as a witness herein for the People of the
3 State of Illinois, having been previously duly
4 sworn, resumed the stand and testified as follows:

5 DIRECT EXAMINATION{}

6 BY MR. MURPHY:

7 Q. Officer Tovar, you testified you began
8 your conversation with the defendant approximately
9 10:30, August 8, 1988, is that correct?

10 A. No, later than that.

11 Q. That is what time he arrived at the
12 police station?

13 A. Yes.

14 Q. And, that was at 11th and State?

15 A. Yes.

16 Q. That was 10:30 p.m.?

17 A. Yes.

18 Q. Approximately how long did you begin
19 speaking with the defendant, if you recall?

20 A. I would say some time after 11:00
21 o'clock.

22 Q. And how long did you speak to him?

23 A. I would say the entire time I was with
24 the defendant, might be a little over an hour.